Environmental Law & Litigation

Integrity - Service - Excellence

Real Estate Case Studies

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AFLSA/JACE
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Ground Rules

- This is not Real Estate 101
- I am not Ronald Forcier (DSN 696-9193)

- Thought is to provoke discussion of Real Estate related issues that involve complex policy, legal, and environmental solutions
- Participation is encouraged

- Throwing vegetables is bad form

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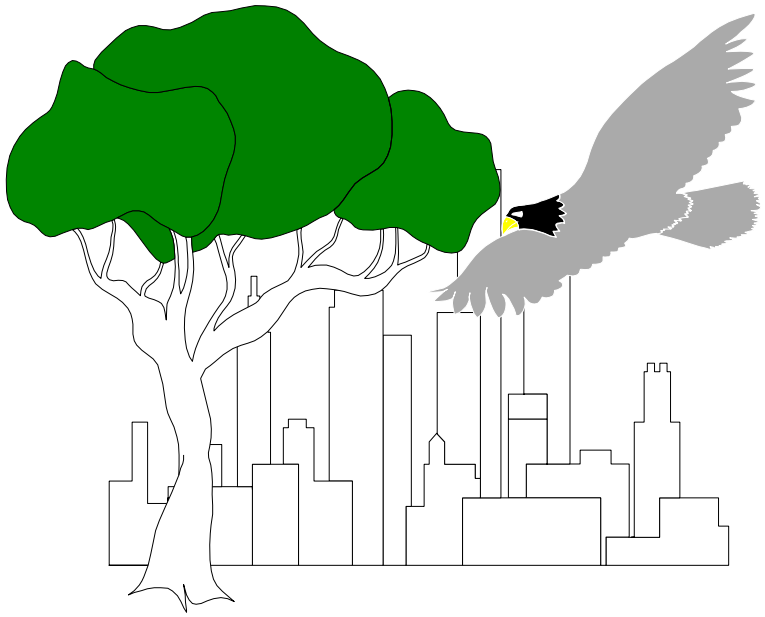
Overview



- New Legislation
- Case Study ABCs
  - Altus
  - Boulders
  - Crash Sites
- Encroachment v. Trespass - What's the difference?
- Off Base Cleanups - "Can we spend many millions to clean your land? Please??"
- Now take my base … please???

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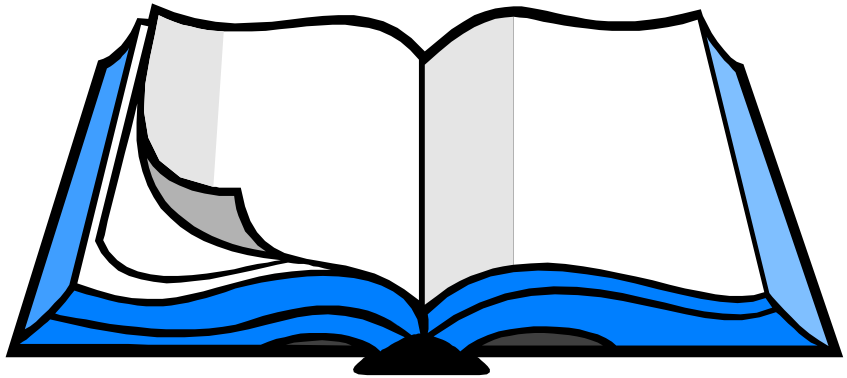
New Legislation

- 10 USC 2667
  - Greater latitude to use this authority to lower BOS
  - Expands allowable “in-kind” payments for outgrants
    - Acquisition of land
    - Building facilities
    - Maintenance
    - Other services
    - Payment no longer tied to the outgranted property
  - Money for outgrants not changed



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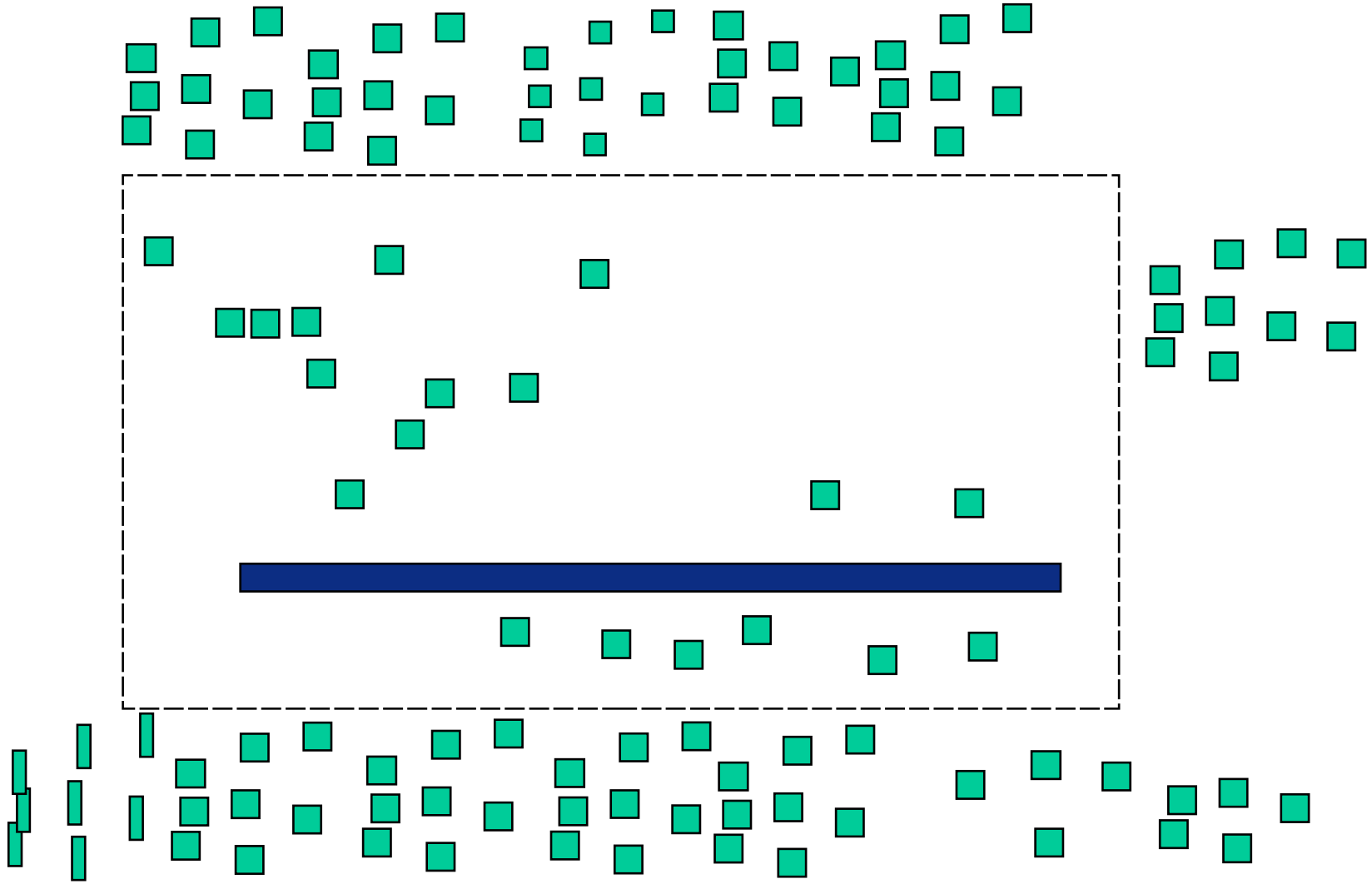
Case Study ABCs - Altus



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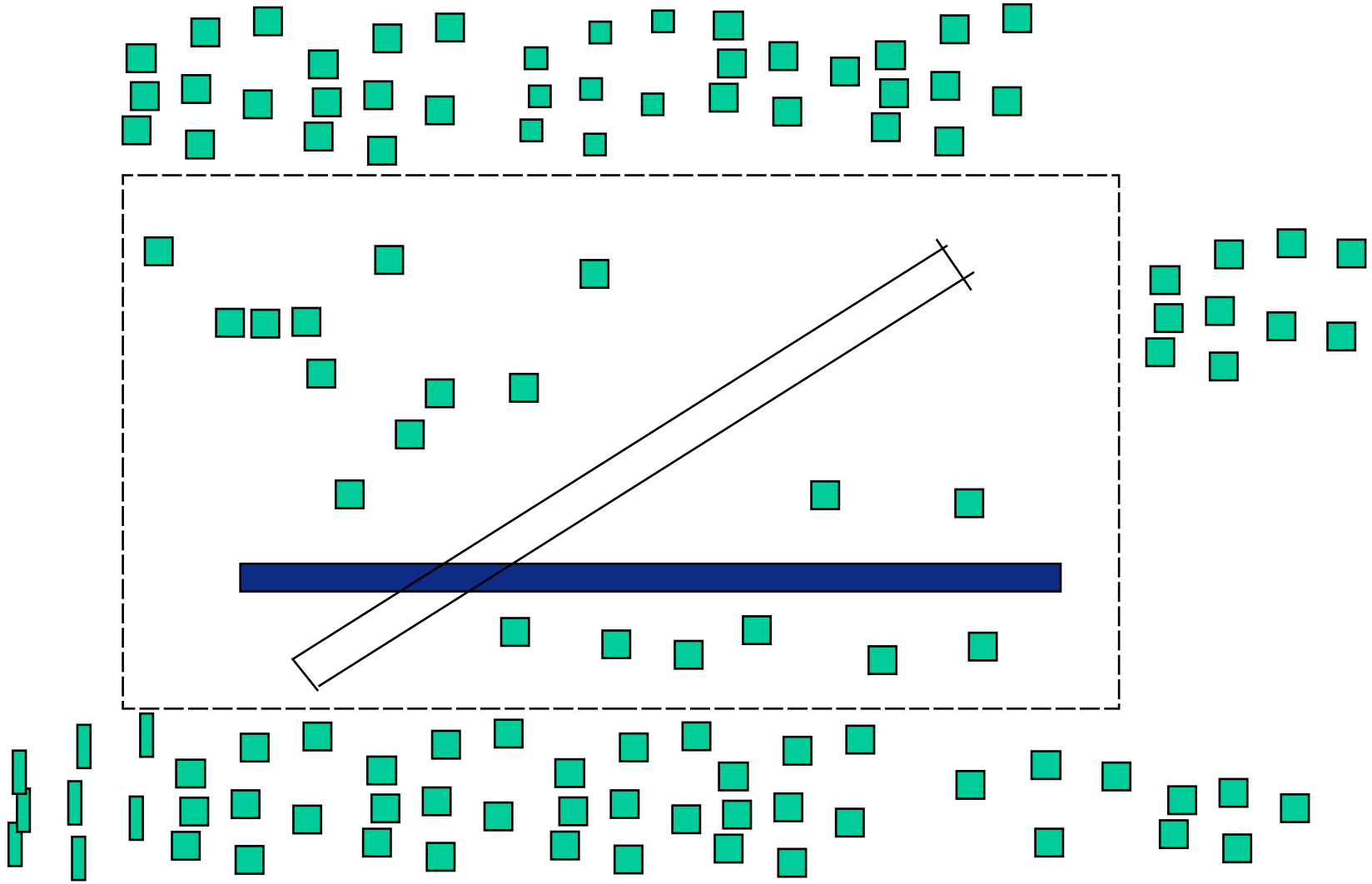
Case Study ABCs - Altus



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Case Study ABCs - Altus

- Complaints roll in - BIG TIME
- Where did we go wrong?
  - Lack of Runway *Use* analysis
  - Classified EA
  - Misunderstood significance of stats
  - Did not analyze project as a RE project
- What are the rules for affecting offbase populace?
  - Causby case (Supreme Court)
  - Branning case
  - Argent case

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Case Study ABCs - Altus

- Immediate Impact to Mission
  - 24 hour flying halted
  - C-5 only allowed on old runway
- Relocation Benefits Act?
- Resolution
  - MILCON land (AICUZ easements) acquisition
  - $11 Million
  - Ongoing
  - 4 years and still not fully resolved
- Lessons Learned
  - Always think on & off base impacts
  - Minimize classification of environmental documents
  - Think real estate and environmental

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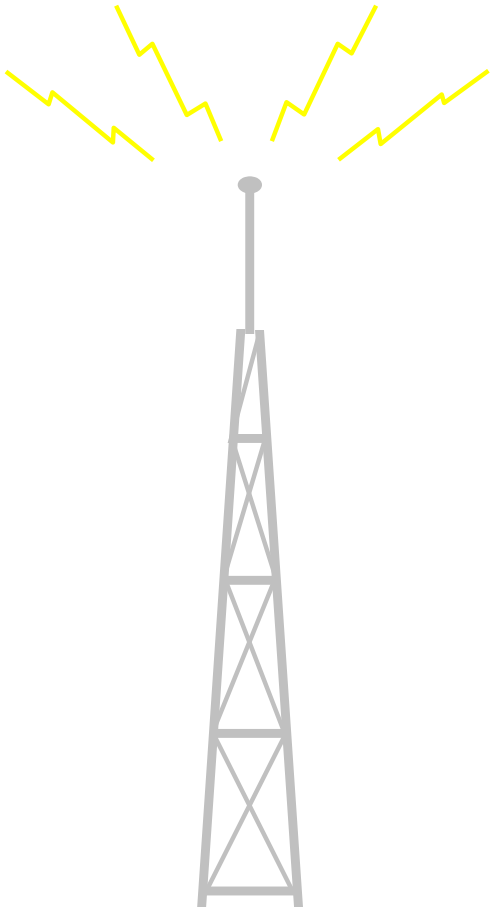
Case Study ABCs - Boulders



- Duty to Repair
  - Look first to the lease
  - Look next to state law
  - Common law and most state laws follow the idea that changes that improve the land can be abandoned
  - Common law and most state laws follow the idea that changes that detract from the land must be repaired
  - Try to turn lemons to lemonade

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Case Study ABCs - Crash Sites

- Initial Response
  - National Defense Area
  - Emergency Env. Response should be part of response package
- Remediation
  - Need RE instrument
    - Right of Entry
    - License
    - Easement
    - Lease
    - “Minimum estate necessary to perform the mission”
  - Negotiate vs. Condemnation

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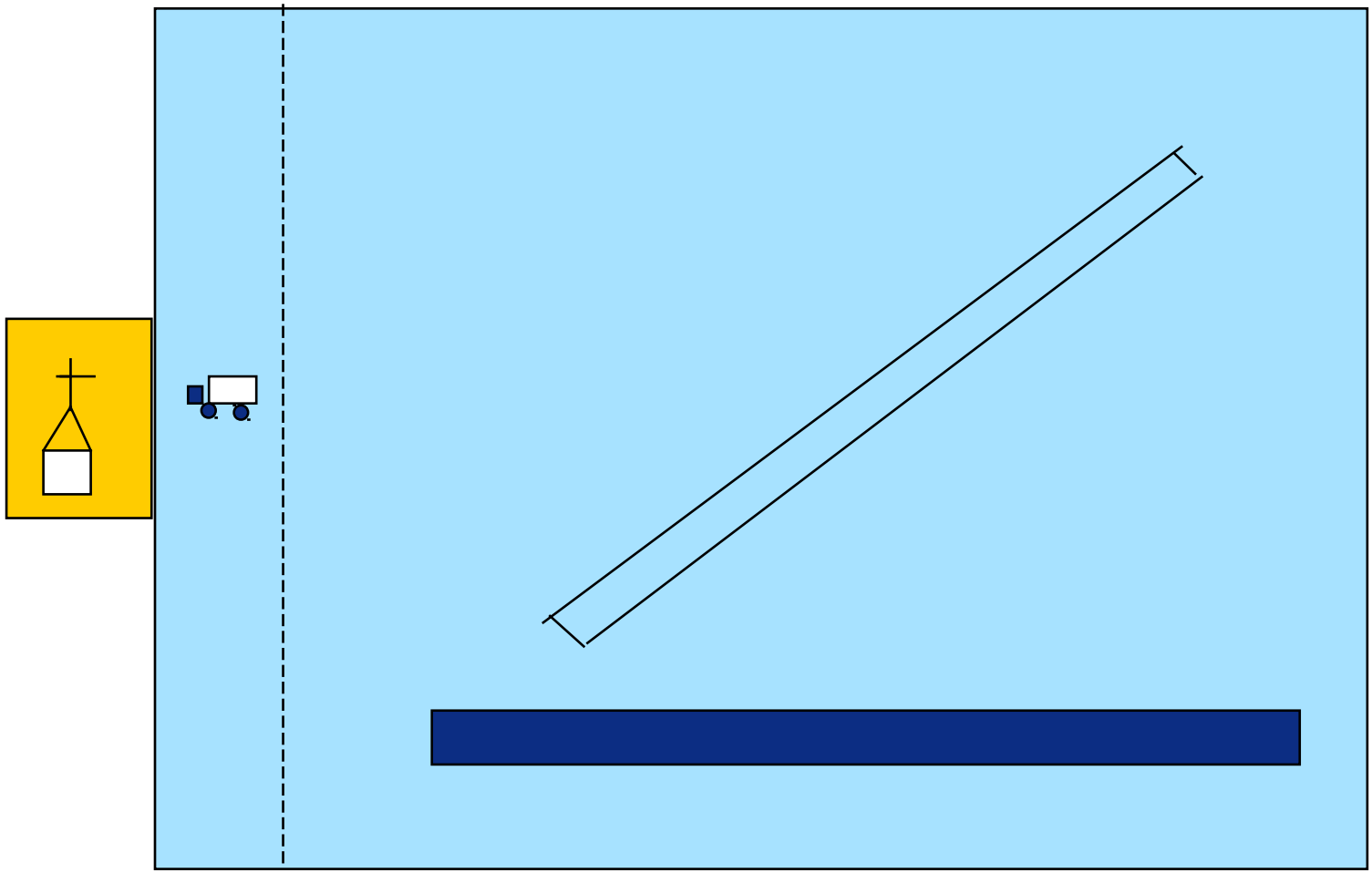
Encroachment v. Trespass - What's the difference?



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Encroachment v. Trespass - What's the difference?

Encroachment - Caused by confusion or our action; resolve by negotiation

Trespass - Caused by knowing and criminal action, squatting; resolve by force, injunction (subject to totality of facts test)

Three mini-cases -

1. **Eglin housing**
2. **Guam**
3. **Cattle at the Academy**

Off Base Cleanups - "Can we spend many millions to clean your land? Please??"

- **CERCLA Cleanups Off-Base - Access**
  - **Condemnation??**
  - **CERCLA 104(e)(3)(A) access to cleanup**
    - **JACE Guidance prevents use - Why?**
    - **Discussions with DOJ/AG (holds veto power)**
      - **Wants us to rely on our own RE authority**
      - **We are seen as the bad guy**
      - **EPA can use this authority**
  - **Negotiation**
    - **"Minimum estate necessary to**

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Now take my base … please???

The Brooks ~~Model City~~ Base ~~City Base~~ Concept

- Brooks City Base Project
  - Initial Idea
  - Change One
  - Present Version

- **Major Real Estate, Environmental, and Policy Issu**
  - Is “Commercialization” of your base an option?
  - Can you BRAC a base without BRAC?
  - Can the military live interspersed with civilians?
  - Is the military culture necessary at all military bases?
  - Can this be done without special legislation?

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Now take my base … please???

Structuring a long-term relationship through a real estate deal. Issues to resolve:

a. Jurisdiction
b. Legal instruments
c. Long-term environmental concerns
d. AF use of facilities
e. AF aesthetics
f. Commander control
g. Security
h. Residual issues

Wave of the future or flash in the pan??

Real Estate Case Studies

Questions?